

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8231 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

KANCHAN @ KACHARO MOHANBHAI MACHHI

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner
Mr. S.R. Divetia, AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 06/02/98

ORAL JUDGEMENT

By this application under Article 226 of the Constitution of India, the petitioner calls in question the legality and validity of the order of detention dated 22nd October, 1997, passed against him by the District Magistrate, Bharuch, invoking the powers under Section 3 of the Gujarat Prevention of Anti-Social Activities Act (for short 'the Act').

2. In order to appreciate the rival contentions, necessary facts may in brief be stated. The sponsoring

authority perusing the police records found that about 4 prohibition cases were filed in Bharuch City 'A' Division police station alleging that without pass and permit the petitioner was found in possession of liquor, the quantum of which was ranging from 2 1/2 litres to 216 litres and thereby committed the offences punishable under Section 66 (1) (b), 65-(e) and Section 81 of the Bombay Prohibition Act. The sponsoring authority after inquisition also found that the petitioner being the bootlegger was disturbing the public order by carrying out his subversive activities. He could also know that the petitioner was a headstrong person i.e. a tartar & decimator, and by different criminal activities, he was terrorising the people. He was extorting money, causing injuries and/or causing damage to the properties. By diabolism, he used to cause the people to bend his way. His hellish and infernal activities disturbing public order were going berserk. No one was, therefore, ready to come forward and state against him. After a great persuasion, and when assurance was given that the facts about them disclosing their identity would be kept secret, some of the witnesses have under great tension stated against the petitioner. After a deep inquiry, the District Magistrate found that to curb the anti-social, subversive and chaotic activities of the petitioner, unspeakable diabolism terrorising the society, and upsetting the public order and leading to anarchy, ordinary law was falling short and was sounding dull. The only way out to hold him in kittle was to detain him under the Act. She, therefore, passed the impugned order. Consequent upon the same, the petitioner came to be arrested, and at present, he is in custody.

3. Challenging the order, it is submitted on behalf of the petitioner that there was no justification for the authority to pass the impugned order. Even if it is believed for a while that the petitioner was a bootlegger, that cannot be a ground to pass the order in question. It is also the submission of the petitioner that without any just cause the particulars of the witnesses were suppressed, as a result his right to make effective representation was jeopardised. He cannot be described as the dangerous person. On other grounds also making necessary submissions this court is urged to set aside the order holding that the order of detention passed is not at all in consonance with law and the pronouncements already made up-till-now by this court as well as Apex Court. Mr. S.R. Divetia, learned AGP made sincere efforts to support the order in question. After I made query to both the ld. advocates they have tapered off their submissions confining to the only point namely

creation of insecurity or panic in general public and thereby disturbing the public peace and order. I will therefore confine to that point alone which is going to the root of the case.

4. As per the order passed, it appears that because of the bootlegging activities the District Magistrate was led to pass the order in question. Simply because a person is a bootlegger he cannot be detained under the provisions of the Act unless his activities as a bootlegger affect adversely or likely to affect adversely the maintenance of the public order. A person may be fierce by nature, but so long as the public generally are not affected by her activities or conduct, the question of maintenance of public order will not arise. The authority passing the order must show that he had sufficient material indicating that there was a feeling of insecurity amongst the general public and in the minds of the members of the public, panic was created upsetting the tempo of the life of the community. If the bootlegger while carrying out his business indulge in use of force and violence and by illegal sale of liquor if he creates an atmosphere of fear and terror by beating the innocent persons, or threatening the innocent persons, such minor incident of beating or threatening would not create terror in the public and would not disturb the public peace and order. On such ground therefore the petitioner though believed to be a bootlegger as alleged and carrying out certain activities as alleged, the same being minor incidents cannot be made the base to brand the petitioner as dangerous person creating insecurity or panic in general public for which the detention can be said to be the only way out. For my such view, a reference of a decision in the case of Piyush Kantilal Mehta vs. Commissioner of Police, Ahmedabad City - AIR 1989 S.C. 491, may be made. In this case, when on the basis of few minor incidents of beating and threat referred to by the authority passing the order in his order the petitioner alleged to be the bootlegger cannot be branded as 'dangerous person' and his activities cannot be said to be the activities creating insecurity or panic in general public. In view of the matter, the order of detention passed cannot be maintained. The same being illegal has to be quashed and set aside.

5. For the aforesaid reasons, this petition is allowed. The order of detention passed on 22nd October, 1997 by the District Magistrate, Bharuch, is hereby quashed and set aside and the petitioner-detenu is ordered to be set at liberty forth with, if not required for in any other case. Rule accordingly made absolute.

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(RMR)